

LABOUR DEPARTMENT

The 19th June, 1975

No. 5794-4Lab-75/18750.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Haryana Textiles, Rohtak.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 70 of 1974

between

THE WORKMEN AND THE MANAGEMENT OF M/S HARYANA TEXTILES,
ROHTAK

Present .—

Shri Richpal Singh, for the workmen.

Shri Mohinder Lal Sharma, for the management.

AWARD

The workmen of M/s Haryana Textiles, Rohtak, had raised certain demands which were not accepted by the management. This gave rise to an industrial dispute. On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal,—*vide* order No. ID/RK/67B-73/15713, dated 5th June, 1974 with the following terms of reference:—

1. Whether the wages of the workers should be increased by 50% and whether these should be linked with the cost of living index numbers. If so, with what details?
2. Whether the management should be required to confirm all such workers who are required for running the work of the factory? If so, with what details?
3. Whether all the workmen of the factory should be given attendance cards and leave books? If so, with what details?
4. Whether Seasonal uniforms should be given to the Watch and Ward Chowkidars of the factory? If so, with what details?
5. Whether Oilmen and Cleaners should be provided with uniform? If so, with what details?
6. Whether every worker working in Khatas should be supplied 50 Gram Gur daily or be given Gur Allowance in lieu of Gur? If so, with what details?
7. Whether the workers should be granted bonus for the year 1971-72 and 1972-73? If so, with what details?

The parties have arrived at an amicable settlement, Their statements have been recorded. According to the settlement as per terms and conditions given in the memorandum of settlement, dated 25th April, 1974 Exhibit M-1, the management has increased the wages of the various categories of the workmen since October, 1973 and the D.A. has been linked with the costs of living index taking Bhiwani as the basis. It has been agreed that on every increase in the cost of living index taking 145 as the basis an increase of 75 paise per point in the wages would be allowed and *vice versa*.

The management has provided attendance cards and the leave books to the workmen and the provision of the Punjab Industrial Establishment (National Festival Holidays and Casual Leave and Sick Leave Act) have also been implemented. Taking into consideration the financial position of the concern, the workmen have given up the rest of the demands. Their authorised representative Shri Richpal Singh has stated that he had no instruction from the workmen concerned to refute the above settlement and proceed with the reference.

The award is accordingly made in terms of the above settlement arrived at between the parties. There would, however, be no order as to costs.

Dated the 5th June, 1975.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 965, dated the 5th June, 1975

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Dated the 5th June, 1975.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 20th June, 1975

No. 5829-4Lab-75/19322.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Khanna Tailors, 1-K/20, N.I.T., Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

References Nos. 108, 111, 113, 114, 115, 116, 118, 119 and 120 of 1974

between

THE WORKMEN AND THE MANAGEMENT OF M/S KHANNA TAILORS, 1-K/20, N.I.T., FARIDABAD

Present :

Shri N. H. Kumbhare, for the workmen.

Shri R. C. Sharma, for the management.

AWARD

This judgment will dispose of this and the connected references Nos. 111, 113, 114, 115, 116, 118, 119 and 120 of 1974 which have been consolidated on the request of the parties to avoid duplication of work, there being some common points of law and fact involved in all the cases. The facts relevant for the judgement may briefly be stated as under :—

Sarvshri Ram Sarup, Phool Chand, Nater Pal, Farooq, Kanwar Pal, Shiv Singh, Lal Singh, Kishan Singh, Chota Lal were in the service of M/s Khanna Tailors, 1-K/20, N.I.T., Faridabad having been engaged for the stitching of clothes. According to them, they had raised a demand for increase in their wages which displeased the management and, without assigning any reason, their services were terminated on 22nd February, 1974 by refusing them work on that day and onwards. Feeling aggrieved, they demanded reinstatement but without success and the conciliation proceedings held on their demand notices given separately by each one of them ended in failure.

On receipt of the failure report from the Conciliation Officer in each case, the disputes were referred for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the term of reference in each case being the same:—

“Whether the termination of services of the workmen concerned was justified and in order? If not, to what relief are they entitled?”

The parties put in their respective pleadings. The workmen reiterated their demands for reinstatement and payment of back wages alleging that they had put in service for a number of years

and the management had no justification whatever in refusing them work or in terminating their services, as earlier raised through the demand notices leading to the references. The management, on the other hand, contested their claims on merits as well as on legal grounds. To start with it was not admitted that they were workmen as defined under section 2(s) of the Industrial Disputes Act, 1947, their services having been secured for the tailoring work only on contract basis. It was further alleged that the demand, the subject-matter of the reference in each case, had not been first raised on the management and rejected by it so as to constitute an industrial dispute within the meaning of the law. As for the merits of the case, it was contended that the claimants had themselves abandoned the work and the management had done nothing to put an end to their services.

From the pleadings of the parties the following issues arose for determination in the case :—

1. Whether the present claimants are not workmen as defined under section 2(s) of the Industrial Disputes Act, 1947 ? (on management).
2. Whether these are cases of self abandonment of service by the workmen concerned ? If so, with what effect ? (on management).
3. Whether the termination of services of Sarvshri Ram Sarup, Phool Chand, Nater Pal, Farooq, Kanwar Pal, Shiv Singh, Lal Singh, Kishan Singh, Chota Lal was justified and in order ? If not, what relief are they entitled to ?
4. Whether the demands the subject-matter of the present reference was first raised on the management and rejected by it before taking up the matter for conciliation ? If not, with what effect ? (on workmen).
5. Whether the workmen concerned have been gainful employed as alleged by the management ? If so, with what effect ? (on management).

The parties have been heard on issue Nos. 1 and 4 which have been treated as preliminary issues. All the 9 claimants have come into the witness box and made detailed statements regarding the nature of work done by them while in the service of the management. They have further relied upon 12 documents, namely, the demand notice Exhibit W-1, report of the Conciliation Officer Exhibit W-2, forwarding letter Exhibit W-3, notices received from the management Exhibit W-4 to W-11, and the reply sent by them Exhibit W-12.

The management has examined only one witness its partner Shri Jai Chand Khanna. The documentary evidence produced by the management consists to the complaint dated 27th February, 1974 Exhibit M-1 and another complaint dated 25th February, 1974 Exhibit M-2 and the letter dated 25th March, 1974 Exhibit M-3 received through the Conciliation Officer.

Arguments have been addressed at length on both sides and I have given a very careful thought to the material on record and the contentions raised by the learned representatives of the parties. There is not much force in the plea raised on behalf of the management that the present claimants are not workmen as defined under section 2 (s) of the Industrial Disputes Act, 1947. No letters of appointment or any other documents have been produced by the management to show that the services of the claimants were secured on contract basis. From the statement of the workmen read together with the deposition of Shri Jai Chand Khanna Partner, it is clear beyond any shadow of doubt that all the claimants were engaged for the stitching of clothes and they did this work in the workshop of the management on the sewing machines supplied by it. They were paid piece-rated wages every week. An attempt has been made to elicit from the cross examination of the claimants that they used to work at their homes and also at some other tailoring shops in the locality that would not, however, make any difference. Even if it be assumed for the sake of argument that some of the stitching work was done by the claimants at their homes, the management had controlled and supervision over the work done by them. The fact that the sewing machines on which the stitching work was done were supplied by the management is an important aspect of the case which has to be taken into consideration. Then, it has come in evidence that if there were some defects in tailoring and stitching work was done by the present claimants did not conform to the instructions given by the proprietor, the claimants were required to re-stitch the clothes by removing the defects. In the circumstances it can not by any stretch of imagination be held that the claimants were not the workmen as defined under section 2(s) of the Industrial Disputes Act, 1947. They were engaged by the management for stitching of clothes and the management had full control and supervision over their work and that being so, they were workmen of the management to all intents and purposes as defined under section 2 (s) of the Industrial Disputes Act, 1947. The management has not been able to prove or show anything to the contrary. I am supported in the above view by a judgement of the Hon'ble the Supreme Court reported as 1974-LAB-IC-133 between the Silver Jubilee Tailoring House and others, appellants v. Chief Inspector of Shops and Establishments and another respondents. That disposes of issue No. 1 which on the facts established and for the reasons aforesaid is decided in favour of the claimants and against the management holding that they are workmen as defined under section 2(s) of the Industrial Disputes Act, 1947.

Issue No. 4.—This is an important issue which on the facts admitted and brought on record cuts at the very roots of each case. It is common ground between the parties that the demand notice leading to reference in each case was given direct not to the management but to the conciliation officer and it was through the Conciliation Officer that the management come to know about the demands for reinstatement and payment of back dues etc. raised by the workmen giving rise to the present references. The law is well settled on the point. As laid down in the oft-quoted judgment of Hon'ble the Supreme in the Sindhu Resettlement Corporation Ltd., *versus* Industrial Tribunal reported as 1968-ILL-J-834:

“A demand by the workmen must be raised first on the management and rejected by them before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management who rejected the demand is not sufficient to constitute an industrial dispute.”

Following the above judgment a Division Bench of the Delhi High Court in *Feeders Lloyd Corporation (Private) Ltd. versus Lt. Governor, Delhi* reported as AIR-1970-Delhi-60 (1970-LAB-IC-421) was pleased to observe as under :—

“We are of the view that the decision of the Supreme Court in *Sindhu Re-settlement Corporation versus Industrial Tribunal Gujrat* AIR-1968-SC-529-(1968-Lab-IC-526) referred to above, has finally establishment the proposition that a demand by the workmen must be raised first on the management and rejected by them before an industrial dispute can be said to arise exist and that the making of such a demand to the conciliation officer and its communication by him to the management, who reject the same, is not sufficient to constitute an industrial dispute. The decisions and dicta of some of the High Court to the contrary can no longer be considered good law.”

The learned representative of the workmen has vehemently argued that the rule of law laid down in the *Sindhu Resettlement Corporation* case and followed by the Delhi High Court in the judgment referred to above is not applicable to the facts of the instant references and he has invited my attention to the Division Bench Judgement of the Rajasthan High Court reported as 1969-Lab-IC-444 wherein the Hon'ble Judges after referring to the judgement of the Supreme Court in the *Sindhu Resettlement Corporation* case, have been pleased to observe that the application moved by the workmen concerned before the Conciliation Officer immediately after the termination of his service asking for reinstatement which was opposed by the management was sufficient to constitute an industrial dispute. I am afraid the contention has no force and keeping in view the rule of law laid down by Hon'ble the Supreme Court in the aforesaid judgment in clear and unambiguous words, the judgment of the Rajasthan High Court cannot help the present workman to refute the specific contention raised in each case that no industrial dispute existed between the parties because the demand was not first raised on the management and rejected by it so as to constitute an industrial dispute. Issue No. 4 is accordingly decided against the workmen in each case.

In view of my above decision on Issue No. 4, it is not necessary to go into the other issues and the merits of the case for the simple and obvious reason that there being no industrial dispute inexistence in each case the present references are bad in law and without jurisdiction and would, in the result, stand rejected as such. There would, however, be no order as to costs.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 29th May, 1975.

No. 94I, dated 2nd June, 1975.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 2nd June, 1975.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.